

JACK C. PROVINE, SBN 052090
KATHRYN J. ALLEN, SBN 196544
SHAPIRO BUCHMAN PROVINE & PATTON LLP
1333 N. California Blvd., Suite 350
Walnut Creek, CA 94596
Telephone: (925) 944-9700
Facsimile: (925) 944-9701

Attorneys for Defendant and Cross-claimant
NDM, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BONNIE REGINA,

Plaintiff,

v.

QUEST DIAGNOSTICS, INC., NDM,
LLC; and DOES 1-25, Inclusive,

Defendants.

Case No. C07-03881JCS

DECLARATION OF JACK C. PROVINE
IN SUPPORT OF MOTION FOR
ADMINISTRATIVE RELIEF FROM
GENERAL ORDER 56 IN ORDER TO
FILE A MOTION FOR SUMMARY
JUDGMENT AGAINST CROSS-
DEFENDANT QUEST DIAGNOSTICS,
INC.

[Civ. LR 7-11(a); 7-12]

Judge: Magistrate Judge Joseph C. Spero

QUEST DIAGNOSTICS, INC.,

Cross-Claimant,

v.

NDM, LLC and DOES 1-25, Inclusive,

Cross-Defendant.

I, Jack C. Provine, declare:

1 I, Jack C. Provine, declare:

2 1. I am the lead trial attorney for defendant and cross-claimant NDM, LLC ("NDM")
3 in this case and make this declaration in support of NDM's Motion for Administrative Relief
4 from General Order 56 in Order to file a Motion for Summary Judgment against cross-defendant
5 Quest Diagnostics, Inc. ("Quest").

6 2. On June 6, 2008 my associate, Kathryn Allen, and I wrote a letter to Joseph Miller,
7 counsel for Quest, requesting that he stipulate to the filing of the instant motion, as required by
8 Civ. LR 7-11(a). Attached hereto as Exhibit 1 is a true and correct copy of such letter.

9 3. On June 9, 2008, Mr. Miller responded by email that he would not so stipulate.

10 4. On June 9, 2008 my associate, Kathryn Allen, and I responded by email clarifying
11 that we requested stipulation to allow the filing of a motion for administrative relief (as required
12 by Civ. LR 7-11).

13 5. On June 9, 2008 Mr. Miller again responded by e-mail effectively stating that he
14 would not stipulate to allow filing of the instant motion. Attached hereto as Exhibit 2 is a true
15 and correct copy of the e-mail string documenting the foregoing e-mail communications.

16 6. The parties have agreed to execute a Consent Decree in order to resolve the
17 injunctive relief issues in this Americans with Disabilities Act ("ADA") and California access
18 case. Moreover, the parties have a mediation scheduled on June 17, 2008, at which time the
19 parties will mediate Plaintiff's damages issues. However, one of the main issues in this case is
20 liability as between the defendants, NDM and Quest, the lessor and lessee of the subject premises.
21 Accordingly, a judicial determination as to the respective liability between NDM and Quest will
22 be helpful in order to achieve and full and final resolution of this case.

23 I declare under penalty of perjury pursuant to the laws of the State of California that the
24 above is true and correct. Executed this 11th day of June, 2008 at Walnut Creek, California.

25
26 
27
28

Jack C. Provine

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

SHAPIRO BUCHMAN PROVINE PATTON LLP

1030 N. California Street, 26th Floor
West Coast Building 94090
Tel: 925 844 9700
Fax: 925 844 9701

June 6, 2008

Reply to:
Kathryn J. Adina Esq.
E-mail: kjadina@shlp.com

VIA E-MAIL
JMILLER@EBGLAW.COM

Joseph D. Miller
Epstein Becker & Green, P.C.
One California Street, 26th Floor
San Francisco, CA 94111-5427

Re: Bonnie Regina v. Quest Diagnostics, Inc., et.al.
U.S. District Court Case No. C07-03881JCS

Dear Mr. Miller:

This letter is a follow up to our May 22, 2008 letter to you. As we advised, we intend to seek administrative relief from the Stay of General Order 56 in order to file a Motion for Summary Judgment on NDM's First and Second Cross Claims against Quest and for Summary Judgment against Quest on Quest's First through Fourth Cross-Claims against NDM.

Since Judge Spero's Civil Standing Order at C.18 provides that parties meet and confer regarding a joint statement of the undisputed facts, I am writing to request a time during which we can meet and confer regarding the proposed joint statement sent to you on May 22. I am available any time Monday, Tuesday, or Wednesday of next week.

Secondly, Civ. Local Rule 7-11 requires that a Motion for Administrative Relief be accompanied by either a Stipulation, or a declaration explaining why a stipulation could not be obtained. Accordingly, enclosed for your consideration is a proposed stipulation. If the enclosed is acceptable, please call or e-mail with your approval, so that the enclosed can be electronically filed.

Please let us hear from you as soon as possible. If we do not hear from you by Wednesday, June 10, we will proceed with a declaration explaining such and file the motion for Administrative Relief.

www.shlp.com

209522.1
20308-001

Joseph D. Allen
June 11, 2008

Page 7

Thank you for your consideration.

Very truly yours,

SHAPIRO BUCHMAN PROVINCE & PATTON LLP

Kathryn J. Allen

Enclosure

cc: Jack C. Province

JACK C. PROVINE, SBN 052090
 KATHRYN J. ALLEN, SBN 196544
 SHAPIRO BUCHMAN PROVINE & PATTON LLP
 1333 N. California Blvd., Suite 350
 Walnut Creek, CA 94596
 Telephone: (925) 944-9700
 Facsimile: (925) 944-9701

Attorneys for Defendant and Cross-claimant
 NDM, LLC

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

BONNIE REGINA,

Case No. C07-03881JCS

Plaintiff,

v.

STIPULATION TO ALLOW CROSS-
 CLAIMANT NDM, LLC'S MOTION FOR
 ADMINISTRATIVE RELIEF TO FILE A
 MOTION FOR SUMMARY JUDGMENT
 AGAINST CROSS-DEPENDANT QUEST
 DIAGNOSTICS, INC.

QUEST DIAGNOSTICS, INC., NDM,
 LLC and DOES 1-25, Inclusive,

Defendants.

[Civ. L.R. 7-11 & 7-12; Gen. Order 56(B)]

Judge: Magistrate Judge Joseph C. Spero

QUEST DIAGNOSTICS, INC.,

Cross-Claimant,

v.

NDM, LLC and DOES 1-25, Inclusive,

Cross-Defendant.

1 It is hereby stipulated and agreed by and between the affected parties, by and through their
2 respective counsel, that NDM, LLC shall be permitted to file a Motion for Administrative Relief.

3 **THE FOREGOING IS SO STIPULATED.**

4 Dated: June , 2008

SHAPIRO BUCHMAN PROVINE & PATTON LLP

5
6 By: /s/ Jack C. Provine
Jack C. Provine,
7 Attorneys for Defendant NDM, LLC

8 Dated: June , 2008

EPSTEIN BECKER & GREEN, P.C.

9
10 By: /s/ Joseph D. Miller
Joseph D. Miller
11 Attorneys for Defendant Quest Diagnostics, Inc.

12 ATTESTATION OF ELECTRONIC FILING

13 As the attorney for Plaintiff, e-filing this document, I hereby attest that Joseph D. Miller
14 has concurred in this filing.

15 Dated: June , 2008

SHAPIRO BUCHMAN PROVINE & PATTON LLP

16
17 /s/ Jack C. Provine
18 Jack C. Provine,
19 Attorneys for Defendant NDM, LLC

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

21 Dated: June , 2008

22 By: _____
23 Judge Joseph C. Spero
24 United States District Court, Northern District of
25 California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

209515.1

Kathryn J. Allen

From: Joseph D. Miller [JMiller@ebglaw.com]
Sent: Monday, June 09, 2008 4:53 PM
To: Kathryn J. Allen
Cc: Jack C. Provine
Subject: RE: Regina v. Quest Diagnostics, et al.

I don't believe that you can file the motion until after the mediation. Furthermore, you still have not given me any idea when you intend to file the motion or have it heard. I need that information because we will need time to conduct the discovery to oppose the motion. Finally, if the case does not resolve at the mediation, we are considering having the case referred to arbitration pursuant to paragraph 37 of the lease.

I should be in the office late tomorrow morning. Give me a call to discuss.

JDM

-----Original Message-----

From: Kathryn J. Allen [mailto:kallen@sbllp.com]
Sent: Monday, June 09, 2008 4:32 PM
To: Joseph D. Miller
Cc: Jack C. Provine; Leslie J. Mann
Subject: RE: Regina v. Quest Diagnostics, et al.

We are asking you to stipulate to our moving for relief from stay for the purpose of filing a Motion for Summary Judgment. We are required to submit such stipulation (or declaration explaining why the parties have not stipulated) pursuant to Local Rule 7-11. This is different than the meet and confer requirement for the Separate Statement. Please let us know by close of business tomorrow (June 10) whether you agree to stipulate to our Motion for Relief from Stay.

Thank you.

-----Original Message-----

From: Joseph D. Miller [mailto:JMiller@ebglaw.com]
Sent: Monday, June 09, 2008 10:05 AM
To: Kathryn J. Allen
Cc: Jack C. Provine; Leslie J. Mann
Subject: RE: Regina v. Quest Diagnostics, et al.

Dear Ms. Allen

I am now in receipt of your June 6 e-mail. For reasons, that I suspect have to do with secretarial flux in our office last month, I did not see the May 22 letter until today. There was, however, no statement of undisputed facts accompanying the May 22nd letter. Obviously I cannot comment on what I have not seen. Beyond that, I cannot stipulate to your proposed motion because you have not bothered to explain what relief you are seeking or the basis therefor. In terms of your wanting to file a summary judgment motion, that of course is your prerogative. Obviously any such motion will need to come after we have completed the essential discovery to oppose it. In addition to not having your proposed statement of undisputed facts, this is a very bad week for me to meet and confer. I am available next Wednesday, Thursday or Friday. In the meantime, e-mail the proposed statement to me. Let me know what works for you.

Regards

JDM

-----Original Message-----

From: Deborah H. Miller [mailto:dmiller@sbllp.com]

Sent: Friday, June 06, 2008 4:23 PM
To: Joseph D. Miller
Cc: Jack C. Provine
Subject: Regina v. Quest Diagnostics, et al.

<<20080606162633.pdf>> Mr. Miller:

Please see the attached correspondence from Kathryn J. Allen. Thank you.

Deborah Miller
Assistant to Kathryn J. Allen
Shapiro Buchman Provine & Patton LLP
(925) 944-9700